IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1821 of 1998

WITH

MISC. CIVIL APPLICATION NO. 999 OF 1998

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE D.H.WAGHELA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BABUBHAI DINKARRAI DAVE SINCE DECD.THRO HEIRS & L.RS.

Versus

MUNICIPAL COMMISSIONER

Appearance:

1. Special Civil Application No. 1821 of 1998
and Misc. Civil Application No. 999 of 1998 :

MR HARIN P RAVAL for Petitioner No. 1,1/1-1/3-8
MR PRASHANT G DESAI for Respondent No. 1
MR GM JOSHI for Respondent No. 2-4
MR SAMIR B DAVE for Respondent No. 5 - Absent

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 07/05/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE R.K.ABICHANDANI)

1. These matters have been argued together by the learned counsel for the parties, who have relied upon the record of both the matters for the purpose of their arguments.

2. Special Civil Application No. 1821 of 1998 has been filed for a direction on the respondent No.1 Municipal Commissioner of the Surat Municipal Corporation and the officials of the Corporation to initiate appropriate action as contemplated under Chapter 15 of the Bombay Provincial Municipal Corporation Act, 1949, for demolition of the unauthorized construction put up on the land of survey No.344/3 corresponding to final plot No.17 of Town Planning Scheme No.4 of Surat, pertaining to village Katargam, admeasuring 4606.00 sq. mtrs. A direction was also sought on the respondent No.5 to accord appropriate police protection to the petitioners for protection of their rights in respect of the said land.

2.1 According to the petitioners, on the basis of the sale agreement in respect of the said land, a suit for specific performance (Special Civil Suit No.82 of 1974) was filed by the petitioner No.1 in which a decree was passed on 6-2-1975 for specific performance of the said sale agreement dated 27-12-1963. Execution proceedings were initiated being Special Execution Application No. 84 of 1983 and ultimately, by four separate sale deeds dated 28th February 1997 title in the said land came to be passed for each of the four sub-plots admeasuring 1106.50 sq. mtrs. in favour of the petitioners. The copies of the said sale deeds dated 28th February 1997 are at Annexure "A" collectively to the petition. It is stated in the petition that the proceedings of that suit were not required for the proper redressal of the grievance of the petitioners in the present petition and therefore, they were not appended. However, it will be noted from the record of Civil Application No. 242 of 2002 made in this petition that the said Regular Civil Suit No. 1727 of 1993 was filed by the petitioners against Natvarlal, Govindbhai Contractor and Vaghjibhai

Veljibhai on an allegation that these defendants were about to make illegal construction on the land in question and an injunction was sought in paragraph 4(1) that they should not carry out any construction or work in the land in question. By order below exhs.5, 14, 17 and 22 of that Regular Civil suit No.1727 of 1993 made on 11th May 1994, ad-interim injunction which was granted earlier was confirmed, meaning thereby that those defendants were restrained from carrying out any construction on the said land.

2.2 In paragraph 7 of the petition, it has been pointed out that Regular Civil Suit No.744 of 1996 was instituted by 41 persons against the original owners of the land and some of the petitioners claiming that the said lands were agreed to be disposed of by the original owners of the said land in favour of proposed Devjinagar Cooperative Housing Society and therefore, neither the original owners nor the persons claiming through the original owners of the said land, including the petitioners, would have any right in respect of the said land even on the strength of the said judgement and decree for specific performance made in Special Civil Suit No.82 of 1974. It is stated that the proceedings of that suit were also not relevant for the redressal of the grievance raised in the present petition and therefore, they are not produced. After the execution of the sale deeds, Regular Civil Suit No. 687 of 1997 was instituted by one Sushilaben Patel, as stated in paragraph 8 of the petition, for restraining the Municipal Corporation from causing any demolition of any construction put up and contemplated to be put up upon the land in question. In that suit, no order of interim relief was granted.

2.3 According to the petitioners, since they were the exclusive owners of the respective sub-plots, forming the part and parcel of the said land, no other person had got any right to put up any kind of construction upon the said land. It is then alleged in paragraph 10 of the petition that the respondents Nos. 2, 3 and 4 had started putting up construction upon the said land as Organizers, Promoters and Administrators of the said proposed Devjinagar Cooperative Housing Society Ltd. by causing trespass and encroachment upon the said land. At the behest of the respondents Nos. 2, 3 and 4, construction was being put up, without any sanction from the Municipal Corporation under the provisions of the said Act. When the attention of the Corporation was drawn to such construction, the Executive Engineer issued a notice to the Court Commissioner under Section 260(1)(a) on 8th October 1997 as per Annexure "C" to the

petition. An order was also issued under Section 276 alongwith that notice, restraining the concerned persons from putting up any construction as per the copy at Annexure "D" to the petition. Thereafter, a communication dated 13th November 1997 was issued by the Corporation to the persons concerned to remove the construction from the said land as it was unauthorized. A copy of that communication is at Annexure "E" to the petition. The petitioners sent a response dated 15th October 1997 requesting the Corporation to remove the unauthorized construction on their land. According to the petitioners, attempt on the part of the respondents Nos. 2 to 4 to put up construction upon the said land was unauthorized and illegal and the corporation was under an obligation under Section 267 of the Act and other provisions of Chapter 15 thereof to cause demolition of such unauthorized construction. According to the petitioners, the Municipal Corporation, however, has not taken any action and the Police Commissioner has not taken any concrete steps to provide requisite police protection to the petitioners for the purpose of protecting their rights in the land.

3. The Municipal Corporation, by its affidavit-in-reply filed by the Deputy Engineer, pointed out in paragraph 7 that the two Court Commissioners, who were appointed in Special Darkhast No.84 of 1983, made an application on 12-1-1994 and permission was granted to them by Raja-Chiththi No.15 dated 6-9-1996 for providing basic amenities like gutter line, drainage of rain water, water supply, street light etc. It was mentioned in that Raja Chiththi that, after providing primary and essential facilities in respect of the said land, separate permission was required to be taken for development and construction thereof. It is stated that the Corporation had not sanctioned any development plan and the Raja Chiththi, copy produced at Annexure "II" to the said reply, showed that the layout plan was sanctioned only for the purpose of providing basic amenities. According to the Corporation, proceedings were initiated by show cause notices under Section 260(1)(a) dated 8-10-1997 and an order under Section 267 was issued stopping illegal construction and a warning letter was issued on 13-11-1997 for removal of the illegal construction. Civil Suit No.687 of 1997 came to be filed by Sushilaben Patel, which is pending against the proceedings which were initiated by the Corporation. In paragraph 9 of the affidavit-in-reply, it has been stated by the Corporation that the construction done on the said land without development permission from the respondent Corporation is absolutely illegal and is required to be removed. The

warning letter dated 13-11-1997 for removal of the construction was issued in respect of the plots Nos. 1 to 49 of the said final plot No.17. It is stated that these notices have been issued for restraining the concerned persons from putting up any illegal construction and also for removing the construction illegally made, without obtaining the permission of the Corporation. It is also stated that the construction work was stayed on 19-1-1998 and 23-1-1998 on the site, and on 23-1-1998, the work material of centering of RCC was removed in order to prevent any further illegal construction. It is then stated: "Inspite of required legal proceedings initiated by the respondent Corporation, illegal construction work still continued". Thereafter, the proceedings under Section 387 of the Act were initiated on 14-2-1998 and slabs were removed from the construction and other construction was also removed upto the plinth level. Copies of the photographs showing demolition of the illegal construction are produced at Annexure "III" to the said reply.

3.1 According to the Corporation, therefore, illegal construction was stopped and appropriate steps were taken by the Corporation to remove the same on 14-2-1998. It is denied that the officers of the Corporation had colluded with the respondents Nos. 2 to 4.

3.2 In this petition, while issuing notice on 11-3-1998, the respondent No.1 Corporation was required to look into the matter and take appropriate measures. On 26-3-1998, it was ordered that any action which the respondents may take will be subject to any further order that may be passed in this proceeding, including an order for demolition of the construction which may be put by the respondents thereafter. On 31-3-1998, it was ordered by way of interim relief that the respondent Corporation shall act pursuant to the notices at Annexures "C", "D" and "E" in accordance with law in respect of any unauthorized construction on the said land.

3.3 Thereafter, the matter was admitted on 21-1-1999, and interim relief was ordered to continue till the disposal of the petition. On 23-4-1998, a statement was made on behalf of the respondents Nos. 2 to 4 by their learned counsel Mr.A.J.Patel appearing alongwith Mr.G.M.Joshi that these respondents shall maintain status quo as regards the construction in question. Ad-interim relief has continued all throughout, as would appear, on paper.

4. Miscellaneous Civil Application NO. 999 of 1998

was filed in the Special Civil Application NO. 1821 of 1998 on 8th June 1998, alleging that, despite the said order dated 23-4-1998 made by the Court in the petition, which had the effect of restraining the respondents Nos. 2, 3 and 4 from putting up any construction on the land, substantial construction had come up subsequent to the passing of that order. photographs were produced at Annexure "D" collectively to the said application, which are said to have been taken on 16th and 20th May 1998 showing the construction activity going on in the said land. Photographs are also produced at Annexure "E" collectively showing construction activity in the said land going on as on 28th May 1998. It is stated that, on comparison of these two sets of photographs, it was clear that the construction was going on notwithstanding the order of the Court. It is stated that the respondent No.1 - Corporation had also acted in defiance of the order of the Court by not taking action pursuant to the notices issued by it. The applicants, therefore, sought action to be taken against the opponents Nos. 2, 3 and 4 for committing willful breach of the directions of the Court contained in the order dated 23-4-1998 made in Special Civil Application NO.1821 of 1998 and also sought initiation of contempt proceedings against the opponent No.1 - Corporation for willful breach of the directions given by the Court in its order dated 31st March 1998 made in Special Civil Application No.1821 of 1998.

4.1 The opponent No.2 filed an affidavit-in-reply stating that he had not put up any construction in the said land and did not hold or occupy any piece or plot of said land. He also stated that he was not an Organizer or Contractor or Engineer or Architect in respect of any piece or plot of land which was the subject matter of Special Civil Application No.1821 of 1998, and that, he was wrongly impleaded as a party. He also stated that he did not make any construction nor had he proposed to construct any construction on the land in question. He has, however, tendered unconditional apology if it is found that he was in any way connected with such activity. The opponent No.3 also filed similar affidavit-in-reply stating that he was not concerned with the property.

4.2 In the affidavit-in-reply filed on behalf of the opponent No.1 - Corporation, it has been, in terms, stated in paragraph 5 that the opponents Nos. 2, 3 and 4 were in possession of the land in question and for that they had produced necessary possession receipt, tax bills and the receipt of money paid by them to the organizer for the plot of land in question. It is contended that

the Corporation was not concerned with the ownership of the land. In paragraph 6 of the affidavit-in-reply, it is stated that the Corporation had fully complied with the order of the Court of maintaining status quo. It is stated in paragraph 8 that the Corporation had stopped further progress of any construction activity started by the respondents Nos. 2, 3 and 4 after the order dated 23-4-1998 of this Court and thus, the Corporation had fully obeyed the order passed by this Court. It is thereafter stated that the Corporation had issued notice dated 12-5-1998 to the plot holder. It is then stated: "The opponents Nos. 2, 3 and 4 have made representation on 28-5-1998 before the Corporation and they have produced documentary evidence, viz. copies of possession receipt of plot of land, tax bills issued by the Corporation etc. and they have also requested the Corporation not to demolish construction and the same is under consideration of the Corporation". It has also been stated in the said paragraph: "..... the construction is unauthorized but the same is not illegal and therefore, the same can be regularized as per the Rules. Therefore, in the interest of justice, the request of opponents No.2, 3 and 4 can be considered." It is admitted in paragraph 10 of the reply that the Corporation had not given permission to carry out construction to opponents No.2, 3 and 4. It is stated that, at present, there was no construction work done by them. It is also pointed out that these opponents Nos. 2, 3 and 4 had filed Regular Civil Suit NO. 687 of 1997 in respect of the order dated 31-3-1998, which was pending.

4.3 Further affidavit-in-reply has also been filed on behalf of the respondent No.1 in which it is stated that the Corporation had earlier issued notices under Section 260(1)(a) and 267 of the Act by letter dated 8-10-1997 and thereafter, warning letter dated 13-11-1997 to the persons concerned in respect of the said land for the purpose of restraining them from putting up any illegal construction upon the said land. It is stated that the demolition work was carried out by the Corporation on 14-2-1998 and on 15-10-1998 and some portions like walls, windows etc. of the buildings were demolished. It is stated that, on that day, a mob of persons including ladies were trying to create hindrance in the process of demolition and the ladies squatted on the floor of the property and in front of the demolition machinery whereby it became impossible for the Corporation to carry out demolition work. Again on 23-11-1998, the Corporation had gone to the disputed site to stop the work and had taken away construction materials like centering plates,

bamboos, etc. and on that day also, the Corporation had to face protest of mob. It is stated that the ladies started abusing the officers of the Corporation and it became very difficult for the officers of the Corporation to carry on their work. The officers were, however, successful in taking away some of the material from the construction site. It is then stated in paragraph 6 of the said affidavit that the Corporation is providing basic amenities to the citizen and there was heavy workload and shortage of staff and that apart from regular duties, the Corporation's work-force was also utilized for other work like election duty and emergency work. It is also stated that, due to heavy rain and flood, the staff of the Corporation was also engaged for the services of flood control work. In paragraph 7 of the affidavit, it is stated: "..... The Corporation is always willing to demolish unauthorized construction and the Corporation has taken action for the demolition of the work of the property in question."

4.4 In the further affidavit-in-reply, it is reiterated that the Corporation had carried out demolition work on 14-2-1998 and on 23-11-1998 also, the officers of the Corporation had gone to the construction site when they were obstructed. The Corporation felt that the demolition work was impossible without the Police Bandobast and therefore, it requested by letter to the police authority to provide police force, but they were not in a position to provide the police force because of the bad law and order situation and disturbances in the textile and diamond industries. It is also stated that a letter dated 2-11-1998 was written by one M.L.A. Shri Dhirubhai Gajera in the matter. The respondent Corporation, by letter dated 16-11-1999, had requested the police authority to provide police force which was provided on 19-11-1998. The Corporation had moved with police force on site for demolition work, but could not demolish the illegal construction.

5. We may take note of the fact that the Civil Application NO. 2026 of 2004 has been filed by 52 applicants with a prayer in paragraph 22[A] that they should be joined as interveners in this petition on the ground that they are really affected parties. Earlier, admittedly, an application made by them (Civil Application No.13782 of 1999 in Special Civil Application No. 1821 of 1998) was rejected on 4-2-2002 by the learned Single Judge. These persons had filed Letters Patent Appeal No.89 of 2002, which was withdrawn by them on 21-3-2002. It is recorded in that order made by the Hon'ble the Chief Justice and Hon'ble Mr.Justice

B.C.Patel that, after arguing the matter at length and in detail, Mr. Bharat A. Surti, learned counsel appearing for the appellants had prayed that the appeal may be dismissed as withdrawn inasmuch as the appellants had filed a suit in the Civil Court for declaration qua the disputed land, which was pending. Though the application of these persons for joining them as party respondents in the petition was rejected, and that order became final, they have again made this application for being heard as interveners. We have heard the learned counsel in view of this application, but he was unable to show any right of these applicants in respect of these lands from any reliable record. In any event, the relief claimed in Special Civil Application No. 1821 of 1998 is essentially against the respondent Corporation requiring mandamus to be issued in respect of failure of its duty in removing the illegal constructions which have come up on the lands in dispute during the currency of the order of interim relief, which, if it had been obeyed in letter and spirit, would have prevented any such illegal construction from coming up. The panchnama which has been got prepared through the District Court also discloses that construction has come up on the lands notwithstanding the interim orders operating in respect thereof by virtue of which no construction could have come up.

6. The learned counsel for the parties have made same arguments as are reflected in the contentions raised in the pleadings and therefore, they need not be repeated.

7. The record clearly discloses that some construction took place during the currency of the interim order of this Court directing status quo to be maintained which operates even now. The Corporation, in its affidavit, as noted above, has categorically admitted that construction was carried out by the opponents Nos. 2, 3 and 4, and they had approached the Corporation with a request that the construction should not be demolished. The officials of the Corporation, however, did not effectively stop the construction which was illegally carried out and have failed in their duty to demolish the illegal constructions, which are standing on the said lands, as is reflected from the panchnama and other record.

8. The petitioners had succeeded in the Execution Proceedings till the Apex Court and their title to the property acquired pursuant to a decree of specific performance is not disputed and has become final as per

the sale deeds executed pursuant to the decree for specific performance.

9. The record discloses sordid state of affairs. Despite title of the petitioners to the land being perfected by the sale deeds dated 28th February 1997 on the basis of a decree for specific performance and despite having cleared all legal hurdles put in their way, the Corporation did not prevent the illegal construction being put up on the land despite the Court order and, for nearly six years, did not obey the mandate of its statutory duties requiring it to demolish the illegal construction, under a spacious plea that they were obstructed by the occupants when they have tried to remove the illegal constructions. The Corporation virtually does not know how to assert its powers and it either has feigned helplessness or its officials have connived at the coming up of illegal constructions in violation of the municipal rules and regulations and in blatant disregard of the Court orders to maintain status quo and enforce the notices issued by the Corporation. When a citizen's title to property is contested upto the Apex Court and upheld pursuant to a decree of specific performance, and whose land is protected from illegal construction by court orders, the inaction of the Municipal Corporation resulting in illegal constructions coming up despite the statutory requirements casting a duty on the Corporation to prevent such illegal activity and to demolish illegal constructions, would show that there is no rule of law but mere a rule of jungle where might is right.

10. The learned counsel for the Municipal Corporation, however, submitted that, after the election days are over, the Corporation will take final action to remove the illegal constructions on the land in question with the help of the police which is busy with the election process. Years back, when an affidavit was affirmed on 3-11-1999 for the Corporation in Miscellaneous Civil Application No. 999 of 1998 filed for initiating contempt proceedings, similar ground of workforce of the Corporation being engaged in other work like "election duty" was proffered. We do not appreciate the grounds for inaction put forth by the Corporation. We expect the Corporation to muster up will and courage to discharge its duties under the Act for demolition of the unauthorized constructions put-up on the said land. The learned counsel for the Municipal Corporation states that necessary action will be taken for demolition of the unlawful constructions and such illegal constructions will be removed within two months from today. We,

accordingly, direct the respondent Municipal Corporation to take appropriate action for demolition of the unauthorized constructions upon the said lands in accordance with law. We also direct the Municipal Commissioner to conduct an inquiry to identify the officials and other staff who failed to stop illegal constructions being made on the land in question and did not take timely action to demolish such constructions in accordance with their duties and powers under the provisions of the Act, and the relevant rules and regulations thereunder, and to take appropriate departmental action against them. The police authorities shall assist the Municipal Corporation in discharge of its duties, whenever help is sought for in this matter, in accordance with law. Rule is made absolute accordingly in Special Civil Application No. 1821 of 1998 with no order as to costs.

11. So far as the contempt petition is concerned, in view of the fact that the Municipal Corporation has expressed its resolve through the learned counsel that it will take action for removing the unauthorized constructions, we, with a view to enable the Corporation to purge itself and also to secure the presence of the opponents Nos. 2, 3 and 4 to answer the charges of contempt, direct that Miscellaneous Civil Application No. 999 of 1998 be posted for framing of charges on 28th June 2004. The opponents Nos. 2, 3 and 4 are directed to personally remain present before this Court on that day.

[R.K.ABICHANDANI, J.]

[D.H.WAGHELA, J.]

parmar*